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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,176	09/17/2003	John L. White	P214414	8586

30662 7590 06/23/2005

SCHACHT LAW OFFICE, INC.
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BELLINGHAM, WA 98225-2412

EXAMINER

TRUONG, THANH K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,176

Applicant(s)

WHITE, JOHN L.

Examiner

Thanh K. Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-6, 8, 9, 11-13, 18, 19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 8, 9, 11-13, 18, 19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on April 14, 2005.
2. Applicant's cancellation of claims 2, 3, 7, 10, 14, 16, 17 and 20 is acknowledged.

Drawings

3. Figures 2-4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-6, 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 is the dependent of claim 2, which has been canceled, and claims 5, 6, 8 and 9, directly or indirectly, depend on claim 4. Accordingly, the canceled claim 2 has rendered claims 4-6, 8 and 9 indefinite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4-6, 8, 9, 11-13, 15, 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurylko (4,497,376).

Kurylko discloses a method and an apparatus comprising:

a housing member (12) defining a housing chamber and a vent port 26 arranged between the lower and upper positions, where the vent port defines a preload position, and

allows ambient air to flow into and out of the housing chamber (via air intake-exhaust port 26) under predetermined conditions;

a ram member (14) supported within the housing chamber for movement relative to the housing member between an upper position and a lower position;

a helmet member (18) supported by the housing member for movement relative to the housing member between a rest position and an impact position; and

a lifting system for moving the ram member from the lower position to the upper position during each cycle (column 3, lines 54-55); whereby

when the lifting system raises the ram member above the preload position, ambient air flows into the housing chamber (via air intake port 26);

when the ram member falls below the preload position, ambient air within a preload chamber portion of the housing chamber compresses to apply a preload force on the inner portion of the helmet member (column 3, lines 43-47); and

when the ram member moves into the lower position, the ram member impacts the helmet member to force the helmet member from the rest position to the impact position, thereby driving the pile (column 3, lines 48-50).

Kurylko further discloses: while the ram member is above a preload position, allowing fluid to flow out of a preload chamber portion of the housing chamber defined by the housing member (column 3, lines 56-58); vent port allows ambient air to flow into the housing chamber (intake-exhaust port 26 – column 3, lines 14-15); seal system for sealing the preload chamber portion of the housing chamber when the ram member is below the preload position (figures 1A-1E show sealing rings on member (16) as well as member (18) to keep the chamber of cylinder 12 air tight); a lifting system for moving the ram member from the lower position to the upper position (column 1, lines 12-14); and clamp assembly (24) for securing the helmet member (18) to the pile P.

Response to Arguments

8. Applicant's arguments filed April 14, 2005 have been fully considered but they are not persuasive.

In response to the Applicant's argument that the present claimed invention is not a diesel hammer, and the ram member is lifted after each impact, ambient air passes through the vent port, and compression of the ambient air within the preload chamber

portion applies a preload force on the helmet member. The examiner maintains the rejection because:

The Applicant has not claimed explicitly that the lifting system excludes the resultant explosive force, therefore any force that provides lift to the ram meets the recited lifting system; the ambient air does pass through the vent port (26); and compression of the ambient air within the preload chamber portion applies a preload force on the helmet member (column 3, lines 43-46).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

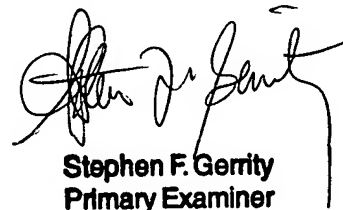
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tkt

June 18, 2005.



Stephen F. Gerrity
Primary Examiner

571-272-4460